

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

LUIS MARTINEZ,	:	
	:	C.A. No. 06A-01-003WLW
Claimant-Below,	:	
Appellant,	:	
	:	
v.	:	
	:	
GENERAL METALCRAFT, INC.,	:	
	:	
Employer-Below,	:	
Appellee.	:	

Submitted: May 23, 2006

Decided: August 22, 2006

**ORDER**

Upon Appeal from a Decision of the  
Industrial Accident Board. Denied.

Walt F. Schmittinger, Esquire of Schmittinger and Rodriguez, P.A., Dover, Delaware;  
attorneys for the Claimant-Below, Appellant.

John J. Klusman, Esquire and Susan A. List, Esquire of Tybout Redfearn & Pell,  
Wilmington, Delaware; attorneys for the Employer-Below, Appellee.

WITHAM, R.J.

***Louis Martinez v. General Metalcraft, Inc.***

**C.A. No. 06A-01-003 WLW**

August 22, 2006

Upon consideration of the parties' briefs and the record below, it appears to the Court:

Claimant-below, Appellant, Luis Martinez ("Mr. Martinez"), filed an appeal with this Court seeking review of a decision of the Industrial Accident Board (the "Board"), awarding him ten weeks of compensation for the disfigurement of his left leg from varicose veins. Mr. Martinez advances two arguments: (1) that the Board's award was paltry when compared to the seriousness of the disfigurement and (2) the Board's decision was not supported by substantial evidence because it failed to sufficiently particularize its findings. Employer-below, Appellee, General Metalcraft, Inc. ("Metalcraft"), asserts that the Board's decision was free from legal error and supported by substantial evidence, so it should be affirmed.

The salient facts are as follows: Mr. Martinez was awarded ten percent benefits for a permanent impairment to the left leg, specifically, varicose veins. The varicose veins on his left leg equal approximately twenty-seven inches in length; they are located on the inside of his left thigh, in front of the knee, and around the ankle; there are dark, coin-shaped spots on Mr. Martinez's knee, ankle and thigh; the varicose veins are popped out and look like vitamin capsules. There are also discolorations on both legs and varicose veins on the right calf, for which Metalcraft has not accepted responsibility. Mr. Martinez testified, and the Board accepted his testimony, that the varicose veins embarrass him. The Board also determined that they are noticeable, although less noticeable than scars on the hands or face. The Board applied 19 *Del. C.* §2326(f), which provides, in relevant part, "[t]he Board shall

award proper and equitable compensation for serious and permanent disfigurement to any part of the human body up to 150 weeks, provided that such disfigurement is visible and offensive when the body is clothed normally . . . .” Based on the language of the statute, the Board found that Mr. Martinez’s disfigurements are visible and offensive when normally clothed and, therefore, awarded him disfigurement benefits.

For the reasons set forth below, Mr. Martinez’s appeal from the decision of the Board is *denied*.

### ***Standard of Review***

The review of an Industrial Accident Board’s decision is limited to an examination of the record for errors of law and a determination of whether substantial evidence exists to support the Board’s finding of fact and conclusions of law.<sup>1</sup> Substantial evidence equates to “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>2</sup> This Court will not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>3</sup> Errors of law are reviewed de novo. Absent error of law, the standard of review for a Board’s

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<sup>1</sup>*Histed v. E. I. Dupont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993); *Willis v. Plastic Materials*, 2003 Del. Super. LEXIS 9; *Robinson v. Metal Masters, Inc.*, 2000 Del. Super. LEXIS 264.

<sup>2</sup>*Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (quoting *Consolo v. Federal Mar. Comm’n*, 383 U.S. 607, 620 (1966)).

<sup>3</sup>*Collins v. Giant Food, Inc.*, 1999 Del. Super. LEXIS 590 (quoting *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).

decision is abuse of discretion.<sup>4</sup> The Board has abused its discretion only when its decision has “exceeded the bounds of reason in view of the circumstances.”<sup>5</sup> Additionally, “this Court will give deference to the expertise of administrative agencies and must affirm the decision of any agency even if the Court might have, in the first instance, reached an opposite conclusion.”<sup>6</sup> “Only where no satisfactory proof exists to support the factual finding of the Board may the Superior Court overturn it.”<sup>7</sup>

### ***Discussion***

Mr. Martinez’s first contention is that the Board’s award was not proper or equitable pursuant to Section 2356(f) in that it was too paltry when compared to the seriousness of the disfigurement. When making its decision, the Board considers four factors established in *Colonial Chevrolet v. Conway*.<sup>8</sup> Those factors are: (1) the size, shape and location of the disfigurement, (2) the social and psychological impacts suffered by the employee, (3) the comparative severity of the disfigurement and (4) other relevant matters.<sup>9</sup> Based on its application of these factors, the Board

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<sup>4</sup>*Digiacoimo v. Bd. of Pub. Educ.*, 507 A.2d 542, 546 (Del. 1986).

<sup>5</sup>*Willis*, 2003 Del. Super. LEXIS at \*2-3.

<sup>6</sup>*Collins*, 1999 Del. Super. LEXIS at \*9.

<sup>7</sup>*Jules-Hall v. Cash Systems, Inc.*, 2006 WL 1679572 (Del. Super.).

<sup>8</sup>1980 Del. Super. LEXIS 145.

<sup>9</sup>*Id.* at \*3-4.

determined that Mr. Martinez was entitled to ten weeks of compensation. However, Mr. Martinez argues that this award is an abuse of discretion.

In support of his argument, Mr. Martinez cites to three cases with which to compare this case. The first is *Bagley v. Phoenix Steel Corp.*,<sup>10</sup> wherein the Supreme Court reversed and remanded a decision of the Board awarding fifteen weeks compensation for an injury to claimant's leg. The injury was the result of claimant's right leg being used as a donor site in a "cross flap" operation to correct an industrial accident to claimant's left foot.<sup>11</sup> Upon reviewing photographs of the claimant's injury to his right leg, the Supreme Court determined that an award of fifteen weeks compensation was "significantly short of proper and equitable compensation under the Statute."<sup>12</sup> However, in the case *sub judice*, this Court has reviewed the photographs of Mr. Martinez's left leg and concludes that an award of ten weeks is proper and equitable. Thus, the Board did not abuse its discretion.

Likewise, the other two cases cited by Mr. Martinez are also distinguishable. Mr. Martinez asserts that his award should have been more similar to the claimant's award in *Taylor v. Hatzel & Buehler*,<sup>13</sup> where the claimant received eighty-five weeks compensation for severe electrical burns to his hands. Clearly, the facts of this

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<sup>10</sup>369 A.2d 1081, 1082 (Del. 1977).

<sup>11</sup>*Id.*

<sup>12</sup>*Id.* at 1083.

<sup>13</sup>258 A.2d 905 (Del. 1969).

case make it distinguishable from *Taylor*, a consideration which Mr. Martinez attempted to downplay in his brief. In *Taylor*, the burns were severe and they were on both hands. Here, Mr. Martinez only suffered compensable disfigurement on one leg. Moreover, in its decision, the Board even noted that if Mr. Martinez's injuries were on his face or hands, they would have been more noticeable, and presumably would have received a larger award. Therefore, *Taylor* is not applicable.

Nor is *Lanham v. Garrison Lake Golf Course*, which is a case that Mr. Martinez's counsel previously argued before the Board. In that case, the Board awarded ten weeks compensation for a "Y" shaped scar that was "approximately one and a quarter inches from side to side and three quarters of an inch from top to bottom. The top flap of the scar is somewhat raised and the horizontal part of the 'Y' is slightly darker than the rest of the scar. Otherwise, the scar does not have much discoloration."<sup>14</sup> Mr. Martinez suggests that because he has many scars that are highly offensive, he should be awarded more compensation than the claimant in *Lanham*. However, the scar on the claimant in *Lanham* was highly visible because it was on his face. Further, the claimant testified that he began wearing his hair longer because he noticed people looking at the scar. For those reasons, *Lanham* is distinguishable from the present case. Consequently, because I find that all three cases cited by Mr. Martinez are inapposite, his first argument fails.

In his second argument, Mr. Martinez contends that the Board's decision is

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<sup>14</sup>*Lanham v. Garrison Lake Golf Course*, IAB Hearing No. 1240658 (March 2, 2005), at 3.

unsupported by substantial evidence because it failed to sufficiently particularize its findings. He argues that although the Board “touches upon” the factors outlined in *Conway* and the calculations required by Section 2326(f), “no logical analysis” could support an award of ten weeks of compensation. I disagree.

The case law on the subject of substantial evidence in a disfigurement case is clear. “It is sufficient to note that no adjudicative authority, administrative or judicial, may function without standards. Similarly, any review of such functioning can be effective only if the reviewing authority can identify what standards were applied and the facts to which the standards were applied.”<sup>15</sup> The Board is not required to address each of the *Conway* factors, but is required to elaborate on those it chooses to address.<sup>16</sup> The Board must “particularize its findings of fact so that the Court can conduct its appellate review.”<sup>17</sup> However, “[b]ecause of the extremely subjective nature of 19 *Del. C.* §2326(f) determinations, Delaware courts have generally given greater deference to the Board’s expertise in this area.”<sup>18</sup> Additionally, in a case where the employee is the only witness before the Board and there are no issues of fact, as is the case here, “somewhat less particularized findings may be acceptable to

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<sup>15</sup>*Branch v. Chrysler Motors Corp.*, 1996 WL 527283, at \*3 (Del. Super.) (citing *Hatzel & Buehler v. Martin*, Del. Super., C.A. No. 80A-AP-11, Walsh, J. (Feb. 6, 1981) (Letter Op.).

<sup>16</sup>*Pollard v. The Placers, Inc.*, 1996 WL 527307, at \*5 (Del. Super.).

<sup>17</sup>*Id.*

<sup>18</sup>*Redmile v. Pathmark Stores, Inc.*, 1999 WL 743527, at \*3 (Del. Super.).

an appellate court.”<sup>19</sup>

In the case *sub judice*, I have reviewed the transcript of the hearing before the Board. Notably, the entire transcript is only six and a half pages and the testimony regarding the disfigurement is at most four pages. Thus, the Board only had to consider Mr. Martinez’s brief testimony, the pictures of his leg and its own recollection of his varicose veins, which they viewed during the hearing.

In its decision, the Board outlined the standards that it applied, namely, Section 2326(f) and the *Conway* factors. The Board also made findings of fact with respect to these standards. In terms of Section 2326(f), the Board stated, “It is undisputed that Claimant’s varicose veins on his left leg are related to the industrial injury and are permanent in nature. The Board finds the disfigurements to be visible and offensive when normally clothed. Therefore, Claimant is entitled to disfigurement benefits.”

As for the *Conway* factors, after listing all four factors, the Board found:

[T]hat the varicose veins on Claimant’s left leg are noticeable. The varicose veins are located on the inside of the left thigh, in front of the knee, and around the ankle. There are also dark, coin-shaped spots on the Claimant’s left knee, ankle and thigh. The varicose veins are popped out from the skin and look like vitamin capsules.

The Board accepts Claimant’s testimony that the varicose veins embarrass him. Located on the leg, the disfigurements are noticeable, although less noticeable than scars would be on the face or hands. Considering all the factors delineated in *Conway*, Claimant is awarded

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<sup>19</sup>*Pollard*, 1996 WL 517307, at \*5.



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ten weeks of compensation for the disfigurement to his left leg.<sup>20</sup>

It should also be noted that the Board observed discolorations on the right leg and varicose veins on the right calf; however, Mr. Martinez is not seeking compensation for those varicose veins and Metalcraft has not accepted compensability for Mr. Martinez's right leg.

As mentioned above, when the claimant is the only witness and there are no issues of fact, the Board does not need to be as particularized in its findings. They need to be sufficient for this Court to conduct its appellate review adequately, and I find that based on the little amount of evidence provided at the hearing, the Board's findings are sufficiently particularized. Consequently, the decision of the Board is supported by substantial evidence.

Based on the foregoing, Mr. Martinez's appeal is *denied*. IT IS SO ORDERED.

/s/ William L. Witham, Jr.

R.J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

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<sup>20</sup>*Martinez v. Steel Works/General Metal*, IAB Hearing No. 1102826 (Dec. 29, 2005), at pgs. 2-3.